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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,462	07/25/2003	Marlene Ann Sexson	SXS-031	3243
7590	03/16/2006			
Lorrain Hirsch, Esq. Law Offices of Lorraine Hirsch 17491 Hicks Road Lo Gatos, CA 95032			EXAMINER WILLATT, STEPHANIE L	
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 03/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/627,462

Applicant(s)

SEXSON, MARLENE ANN

Examiner

Stephanie L. Willatt

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

Claim 8 recites that the toothbrush is made of sheet plastic with a thickness in a range between 0.008 and 0.5 inches. However, the specification does not disclose that the thickness of the toothbrush is less than 0.01 inches.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 11 and 14 are objected to because of the following informalities:

- It seems that "13" was inadvertently inserted at the end of claim 11.
- Claim 14 is missing the claim that it depends from. Since it previously depended from claim 13, it has been examined as though it depends from claim 13.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 1-18 do not invoke 35 U.S.C. 112, sixth paragraph, since: the phrase "means for" or "step for" is not used; the "means for" or "step for" is not modified by functional language; or the "means for" or "step for" is modified by sufficient structure, material, or acts for achieving the specified function.

4. Claims 1, 2, and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658).

Gingrich discloses a folding toothbrush with a handle arm (8) and a bristle arm (10) including bristles. The bristles have an end attached to the bristle arm (10) and a free end. The attached end and the free end defining a bristle axis. A stud (24) attaches the bristle arm (10) to the handle arm (8) such that the two arms can be positioned relative to each other by rotation in an arc in the plane that generally includes the two arms of the toothbrush, as discussed in column 2, lines 37-42. The stud (24) is generally perpendicular to the bristle axis. The bristle arm (10) and the handle arm (8) are positioned generally collinearly in the plane together defining a toothbrush length. The toothbrush length has a bristle end and a terminus. The bristle arm (10) and the handle arm (8) overlap. As shown in Figure 5, the overlapping portion is at least 1/5 of the entire length of the toothbrush.

Regarding the limitation in claims 6-10 that the handle arm and bristle arm are manufactured from sheet plastic, the method of forming the product is not germane to the issue of patentability of the product itself provided that the prior art product is the same or an obvious variant of Applicant's product. The burden is upon the Applicant to

show unobvious differences between the claimed product and the prior art product.

Gingrich states that the bristle arm (10) and the handle arm (8) are made from plastic in column 2, lines 29-35. However, Gingrich does not disclose that the plastic is in the form of a sheet prior to making the toothbrush. The limitations of the handle arm and the bristle arm being manufactured from sheet plastic does not make a structural difference in the final product.

Gingrich states in column 1, lines 10-12 and 21-24 that the handle is “relatively short” and that the toothbrush is “pocket-sized.” However, Gingrich does not disclose any specific dimensions. Roller teaches a travel toothbrush that has a foldable handle including a bristle arm (14) and a handle arm (20). According to lines 45-46 of column 4, the total length of the toothbrush only needs to be between 3.5 and 4 inches long. Each arm only needs to be between 1.94 and 2.19 inches long. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the length of the toothbrush 4 inches long, in order for the toothbrush to be small enough to fit in a person’s pocket.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Gingrich and Roller so that the thickness of the handle arm is within the range of 0.01 inches and 0.1 inches and the thickness of the bristle arm within the range of 0.08 inches to 0.5 inches, since such modifications would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ (CCPA 1955).

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Hill (US 2,418,933).

Gingrich discloses the features discussed above, but does not disclose the use of a grommet for attaching the arms together. Hill discloses the use of a grommet (18) for pivotally attaching two elements together in column 4, lines 17-19. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pivotally attach the arms of Gingrich to each other by an annular grommet, as taught by Hill, since a grommet is a well known functional equivalent of the stud (24) and hole (20) of Gingrich.

6. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Dootson (US 2,409,347).

Gingrich discloses the features discussed above, but does not disclose the use of a grommet for attaching the arms together. Dootson discloses the use of a rivet or grommet (20) for pivotally attaching two elements together in column 2, lines 6-10. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pivotally attach the arms of Gingrich to each other by an annular grommet or rivet, as taught by Dootson, since rivets and grommets are well known functional equivalents of the stud (24) and hole (20) of Gingrich.

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Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Rolleri (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Kassai (US 5,178,170).

Gingrich discloses the features discussed above, but does not disclose the use of a brad for attaching the arms together. Kassai discloses the use of a brad (60) for pivotally attaching two elements together in column 3, lines 52-54. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pivotally attach the arms of Gingrich to each other by a brad, as taught by Kassai, since a brad is a well known functional equivalent of the stud (24) and hole (20) of Gingrich.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Rolleri (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Goldenberg (US 6,039,050).

Gingrich discloses the features discussed above, but does not disclose floss located in the handle arm. Goldenberg discloses floss (35) in the handle (20) of a toothbrush, as shown in Figures 10-12 and discussed in column 4, lines 11-25. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle arm of Gingrich with floss attached to it, as taught by Goldenberg, in order to provide a way for the user to be able to floss his teeth without touching the floss.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Chodorow (US 5,829,293).

Gingrich discloses the features discussed above, but does not disclose a detachable toothpick in the handle arm. Chodorow discloses a flosser (10) that includes a detachable toothpick (314) integrally formed in the handle, as shown in Figure 28 and discussed in column 6, lines 6-31. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle of Gingrich with a detachable toothpick integrally formed in the handle, as taught by Chodorow, in order to provide two different devices at a low cost of manufacturing and packaging only one, and to provide a convenience for the user to purchase and only carry one item.

9. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Curran (US 2,454,995).

Gingrich discloses the features discussed above, but does not disclose that the arms are made of laminated cardboard. Curran discloses a toothbrush with a cardboard bristle arm (body 14) and handle arm (end 17), as discussed in column 1, lines 47-51. It is well-known that toothbrushes get wet, since people put them in their mouths during use, and it is also well-known that cardboard is laminated to prevent it from getting wet or torn (for example, identification cards). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the



arms of Gingrich out of cardboard, as taught by Curran, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416 (CCPA 1960). It would have been obvious to laminate the cardboard, since it is well-known to laminate cardboard in order to prevent it from getting wet or torn. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Gingrich, Rolleri, and Curran so that the cardboard is of a thickness within the range of 0.02 inches to 0.25 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ (CCPA 1955).

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Rolleri (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Shimizu ('522).

Gingrich discloses the features discussed above, but does not disclose that the arms are made of bamboo. Shimizu teaches the use of bamboo as an inexpensive and rigid material for use in making a toothbrush bristle arm (brush head 2) and handle arm (brush handle 1), as discussed in column 2, lines 12-21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the arms of Gingrich out of bamboo, as taught by Shimizu, in order to provide an inexpensive and rigid toothbrush handle.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Wiley (US 3,267,512).

Gingrich discloses the features discussed above, but does not disclose that the arms are made of vinyl. Wiley teaches the use of vinyl plastic as an inexpensive and rigid material appropriate for use in toothbrush handles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle of Gingrich out of plastic vinyl, as taught by Wiley, in order to provide an inexpensive and rigid handle.

12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Gordon.

Gingrich discloses the features discussed above, but does not disclose that toothpaste is applied to the toothbrush in advance of purchase by a consumer. Gordon discloses a toothbrush (10) with toothpaste (20) applied to it in advance of purchase by a consumer, as discussed in column 2, lines 39-42. It would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the toothbrush of Gingrich with toothpaste in advance of purchase by a consumer, as taught by Gordon, in order to provide the toothbrush ready to be used without having to separately purchase toothpaste.

**Conclusion**


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carrott, Hori, Nagel, Shearer, and Wachtel disclose foldable toothbrushes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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